



M.O.E. Policy Manual

POLICY TITLE UNIFORM ENVIRONMENTAL ENFORCEMENT		NO. 05-05-01
<u>Legislative Authority</u> Environmental Assessment Act Environmental Protection Act Ontario Water Resources Act Pesticides Act Provincial Offences Act		
<u>Statement of Principles</u> This policy describes the principles and procedures used by the Ministry to deliver a uniform approach to enforcing its Acts and Regulations. The Ministry will use an appropriate mix of legal remedies to ensure compliance with environmental law. The principles and procedures described below are to be applied to the public and private sectors. <u>Definitions</u> <u>Control Documents</u> A control document is any written instrument which carries statutory authority. These include Minister's reports, licences, permits, certificates of approval, control orders, orders, requirements and directions and program approvals.		
<u>Point of Contact</u>		Director, Investigations and Enforcement Branch
<u>Effective Date</u> May 5, 1986		

Occurrence Report

A written document by which environmental incidents are reported and recommendations for action identified.

1. Principles for Uniform
Environmental
Enforcement

1.1 Prosecution
Principles

The Ministry will follow established principles of prosecution which include:

- (a) Prosecution will be the result of an informed judgement which includes the proper exercise of prosecutorial discretion;
- (b) Equal protection and benefit before and under the law;
- (c) Prosecution will be administered in an even-handed, non-discriminatory and fair manner which advances and protects the public interest;
- (d) Where there is sufficient evidence to prove all the essential elements of the offence but the proper exercise of prosecutorial discretion dictates no prosecution, the reasons for that decision shall be recorded in writing in the confidential investigative file;
- (e) The penalty requested by the Crown Prosecutor upon conviction will be commensurate with the seriousness of the offence, and the circumstances of the offender including the cooperation of the offender.

May 6, 1986

1.2 Considerations in
The Application of
Prosecutorial
Discretion

For the purpose of section 1.1 a proper exercise of the principles of prosecutorial discretion shall include consideration of:

- (a) whether the violation poses a significant risk or adverse effect to humans or the environment;
- (b) whether pollution from the source is a serious obstacle to achievement of Ministry air quality or water quality objectives;
- (c) any unsatisfactory history of pollution control or negative attitude as indicated by the level of effort;
- (d) any unsatisfactory record of compliance with Ministry orders;
- (e) whether the violation seems deliberate in nature or, if not deliberate, the degree of negligence involved;
- (f) whether there has been concealment of information;
- (g) whether the violation was repeated or a warning was disregarded;
- (h) whether the prosecution is likely to have a deterrent effect on the sector generally or on others;
- (i) whether the credibility of the regulatory process with those regulated and the public requires prosecution; or
- (j) whether failure to prosecute would tend to bring the law into disrepute.

A minor offence may be prosecuted by way of ticket procedures.

1.3 Control Documents

The Ministry will use control documents as a means of limiting, eliminating and controlling pollution in Ontario. Any control document issued by the Ministry will be binding and enforced.

1.4 Preparation of Control Documents

Subject to the legislation and to other policies, control documents should be prepared such that they:

- (a) require intermediate steps in a control order to be completed in a timely and regular fashion;
- (b) require the installation of the pollution control equipment by the date specified;
- (c) require that pollution control equipment, once installed, is properly maintained and operated;
- (d) require that pollution control equipment be upgraded or modified as required to prevent occurrences;
- (e) specify the emission, discharge, and monitoring requirements that must be met;
- (f) include procedures to be followed during start-up, shutdown and breakdown, maintenance and decommissioning periods;
- (g) require that once equipment is installed, the person responsible so certifies in writing; and
- (h) require that once installed equipment is operating as required, the person responsible so certifies in writing.

1.5 Responsibility for Emissions and Discharges

The operator of any facility is at all times including during start-up, shutdown, breakdown, maintenance or decommissioning responsible to control emissions and discharges.

1.6 Changes in Status

The Ministry will ensure that conditions be included in all control documents requiring that the person subject to them report any significant changes that are made in the operation of the facility, emissions or discharges, or the legal status of the operation.

1.7 Requests for Abatement

- (a) Where the Ministry makes a written request for action to reduce, prevent or eliminate pollution, a reasonable time to comply will be specified;
- (b) In cases where compliance with written requests is not forthcoming within 180 days maximum, the Director and the Investigations and Enforcement Branch will apply formal sanctions against the polluter. This does not prevent the application of sanctions in a shorter time period. Sanctions may include additional terms or conditions on an approval or control order, or prosecution.
- (c) Policy 05-02 Pollution Abatement Program: Development, Compliance and Enforcement describes the Ministry's abatement program.

2. Procedures for the Implementation of Uniform Environmental Enforcement

2.1 Monitoring

Control documents will be reviewed regularly by the Operations Division to ensure compliance based on regular inspection, testing and monitoring consistent with administrative priorities and the nature of the facility.

2.2 Evaluation Procedures

The Director of the Approvals Branch will develop procedures for evaluation of applications for approval and apply them when considering applications.

2.3 Control Document Update

A periodic review should be undertaken by the Regional Director of control documents issued by the Ministry to ensure that they are current.

05-05-06

2.4 Occurrence Reports

Ministry staff will be required to document in an Occurrence Report any observed or reported violations. Also any action requested by the Ministry to address an occurrence should be documented in writing.

2.5 Examination of
Financial
Capability

Policy 02-01 Guidelines for an Economic Analysis of Private Sector Pollution Abatement and Environmental Protection Measures describes the content and application of economics and financial analyses to pollution abatement activities.

May 6, 1986